IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.26 of 1997
Date of Decision:17.01.2007

The Commissioner of Income-tax, Patiala

.....Applicant

Vs.

Shri Karanbir Singh, Rajinder Kuti, Patiala

.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Yogesh Putney, Advocate for the applicant- revenue.

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M.M.KUMAR, J.

The following question of law has been referred for opinion of this Court by Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, `the Tribunal') arising out of order dated 22.7.1996 in I.T.A. No.350/Chandi/91 for the assessment year 1986-87:-

> "Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that the amount of interest on enhanced compensation received in June, 1985 in consequence upon judgement of Distt. Judge and the amount having been utilized/invested in discretion of the assessee, was not includible in the total income of the assessee?"

Briefly the facts, as mentioned in the statement of the case, are that the agriculture land belonging to the assessee was acquired by the Punjab State Electricity Board in 1962. During the assessment year in question, the assessee received enhanced compensation and interest to the tune of Rs.11,87,485/- and Rs.17,06,686/- respectively. The Assessing Officer held that the entire amount of interest received at Rs.17,06,686/- was assessable in the assessee's hands for the assessment year 1986-87 as the amount was actually received during that year vide order dated

15.2.1990. Aggrieved against the order of assessment on this count, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) (for short, `the CIT(A)'). The primary contention raised by the assessee in appeal before CIT(A) was that the amount of interest had received by the assessee was not at all taxable in his hand during the year in question in terms of judgment of Hon'ble the Supreme Court in **Commissioner of Income Tax, West Bengal-II v. Hindustan Housing and Land Development Trust Ltd.**, (1986) 161 ITR 524. In the alternative, it was submitted that in any case, the entire amount of interest of Rs.17,06,686/- was not assessable during the year in question as the interest had accrued year after year and the interest relatable to the assessment year in question could at best be assessed during that year. The CIT(A) did not accept the primary contention raised by learned counsel for the assessee but while accepting the alternative plea, directed the Assessing Officer to bring under assessment only that amount of interest which accrued to the assessee during the assessment year in question. For that purpose, the CIT(A) relied upon decision of Hon'ble the Supreme Court in **Rama Bai v. Commissioner of Income Tax, Andhra Pradesh**, (1990) 181 ITR 400. The revenue was not aggrieved against the order passed by the CIT(A) directing the assessment of only interest pertaining to the assessment year in question. However, the assessee, being still aggrieved, preferred an appeal before the Tribunal. The Tribunal relying upon decision of Hon'ble the Supreme Court in **Hindustan Housing and Land Development Trust Ltd.'s case (supra)** accepted the appeal of the assessee and directed that as the matter regarding compensation had not attained finality but was still fluid, no amount of interest should be held to be taxable.

We have heard learned counsel for the revenue. However, no one has chosen to put in appearance on behalf of the assessee. The primary contention raised by learned counsel for the revenue is that the principles of law laid down in **Hindustan Housing and Land Development Trust Ltd.'s case (supra)** are not applicable in the facts and circumstances of the present case as the right to receive compensation by the assessee is not in dispute and it is only the quantification thereof, on account of which the appeals were pending at the relevant time. Merely because the quantum issue had not attained finality, the amount which had actually been received

and was available at the discretion of the assessee could not be held to be non-taxable as the same would be totally against the spirit of the taxing statute. He referred to and relied upon a judgment of the Andhra Pradesh High Court in **Commissioner of Income Tax v. Smt. M. Sarojini Devi,** (2001) 250 ITR 759. However, we do not find any merit in the contention raised by learned counsel for the revenue as against a solitary judgment of Andhra Pradesh High Court in **Smt. M. Sarojini Devi's case (supra**), there are many judgments of different High Courts taking a view in favour of the assessee on the issue, namely, **Commissioner of Income Tax v. Laxman Dass and another** (2000) 246 ITR 622 (ALL.); **Director of Income Tax (Exemption) v. Goyal Charitable Trust** (1995) 215 ITR 672 (Delhi); **Chief Commissioner of Income Tax and another v. Smt. Shantavva** (2004) 267 ITR 67 (Karnataka) and **Commissioner of Income Tax v. Abdul Mannan Shah Mohammed** (2001) 248 ITR 614 (Bombay). A Special Leave Petition in a similar case was dismissed by Hon'ble the Supreme Court reported in **Commissioner of Income Tax v. Janabai Vithobai Dudhe** (2004) 268 ITR 215 (Statutes). In **Abdul Mannan Shah's case (supra),** it was held as under:-

> "Secondly, whether the said amount could be taxed when it was specifically deposited by the Government in appeal to the High Court. In the case of *CIT v. Hindustan Housing and Land Development Trust Ltd.* (1986) 161 ITR 524(SC), the Supreme Court has held that when the Government has appealed against the award and the additional amount of compensation was deposited in the court, it was not taxable at that stage as the additional compensation would not accrue as income when it was specifically disputed by the Government in appeal. In view of the said judgment of the Supreme Court, there is no merit in this appeal. No substantial question of law arises. The judgment of the Supreme Court, on facts, squarely applies to the facts of the present case. Hence, the appeal is dismissed."

The view expressed by Bombay High Court in **Abdul Mannan Shah's case (supra)** was followed in a subsequent order passed by Bombay High Court in ITA No.2 of 2002 – **CIT v. Janabai Vithobai Dudhe** decided on January 23, 2003 as reported in 268 ITR 215 (Statutes). The

Special Leave to Appeal against the subsequent order passed by Bombay High Court in **Janabai Vithobai Dudhe's case (supra)** was dismissed on March 8, 2004.

Similar view was expressed by Allahabad High Court in **Laxman Dass's case (supra)**. The same view was expressed in **Goyal Charitable Trust's case (supra)** and further followed by Delhi High Court in **Paragon Constructions (I) Pvt. Ltd. v. Commissioner of Income Tax and another,** (2005) 274 ITR 413 in a matter pertaining to arbitration where the amount of arbitration award received by the assessee was not held to be taxable till the proceedings attain finality.

In **Abdul Mannan Shah Mohammed's case (supra),** the Bombay High Court while following **Hindustan Housing and Land Development Trust Ltd.'s case (supra)** dismissed the appeal filed by the revenue where the revenue sought to tax the compensation and interest before proceedings for determination of the compensation attained finality. In **Goyal Charitable Trust's case (supra)**, the Delhi High Court while relying upon **Hindustan Housing and Land Development Trust Ltd.'s case (supra)** rejected the petition filed by the revenue under Section 256(2) of the Income Tax Act (for short, `the Act') seeking to refer the following question of law for opinion of the Court:-

> "Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in dismissing the Departmental appeal and holding that the interest accrued on compensation could be assessable only after the enhanced compensation had been finally determined with the interest earned by the assessee during the year under consideration and had nothing to do with the compensation/ enhanced compensation?"

In its opinion, the issue was covered against the revenue. The Karnataka High Court in **Smt. Shantavva's case (supra),** while considering an identical issue after amendment of Section 45(5) of the Act, answered the question against the revenue and in favour of the assessee.

We have considered the judgment of Andhra Pradesh High Court in **Smt. M. Sarojini Devi's case (supra)** where the Court had taken the view that the Assessing Officer need not to wait till the matter

regarding assessment of compensation attains finality. However, for arriving at the above conclusion, much discussion is not available. Against this, we find that in a number of judgments as referred to above, different High Courts have taken the view in favour of the assessee. We further find that under similar circumstances, special leave to appeal against a judgment of Bombay High Court has also been dismissed. However, keeping in view the totality of circumstances and the ratio of judgments referred to above taking a view in favour of the assessee, we answer the question against the revenue and in favour of the assessee by holding that the revenue was not entitled to tax the amount of interest received by the assessee on account of acquisition of land till such time the proceedings in reference thereto attain finality.

The reference is disposed of in the manner indicated above.

(M.M.KUMAR)
JUDGE

January 17, 2007 **(RAJESH BINDAL)**
renu **JUDGE**